

NTSB Order No.  
EM-78

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 18th day of December 1979.

JOHN B. HAYES, Commandant, United States Coast Guard,

vs.

JOHN E. MAGIE, Appellant.

Docket ME-75

OPINION AND ORDER

Appellant seeks review of the Commandant's decision affirming a probationary suspension of his merchant mariner's license No. 460791. The license qualifies appellant, inter alia, as a master of freight and towing vessels of not over 1000 gross tons. He was charged with misconduct and negligent navigation while serving, under authority thereof, as master of the M/V ALICE ST. PHILLIP on April 16, 1977, pushing the barge FAUSTINA ahead on an outbound voyage from Tampa Bay, Florida, to the Gulf of Mexico. The initial decision was entered by Administrative Law Judge Michael E. Hanrahan following a full evidentiary hearing.<sup>1</sup>

The law judge found that appellant violated Articles 25 and 18 of the Inland Rules of the Road by failing to keep his flotilla to the starboard side of Gadsden Point Cut, a narrow channel in Tampa Bay;<sup>2</sup> and by failing to pass an oncoming vessel, the SS LOUISIANA BRIMSTONE, properly on the port side after signaling his intention to do so;<sup>3</sup> that he was thereby guilty of misconduct for violating

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<sup>1</sup>Copies of the decisions of the Commandant and the law judge are attached.

<sup>2</sup>Article 25 provides, in pertinent part, that vessels in narrow channels shall "keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel...". 33 U.S.C. 210.

<sup>3</sup>Article 18 requires that when vessels "are approaching each other head and head, that is, end on, or nearly so, it shall be the duty of each to pass on the port side of the other; and either

statutory rules of navigation; and that his actions negligently caused a collision with the other vessel. Upon concluding that both charges were proved, the law judge imposed a 4-month suspension of appellant's license on 8 months' probation.<sup>4</sup> The foregoing findings were affirmed on appeal to the Commandant (Appeal No. 2152). However, the sanction was reduced to a 2-month suspension on 4 months' probation.<sup>5</sup>

In his brief on appeal, appellant contends that the Coast Guard did not sustain its burden of proof; that the law judge erred in holding that he had the burden of showing "freedom from negligence" (I.D. 19); that his actions aboard the towing vessel were timely and appropriate in attempting to comply with the Rules; and that he was not responsible for the vessel's failure to respond in the usual way to rudder and engine power settings. He seeks dismissal of the charges on these grounds. Counsel for the Commandant has filed a brief in opposition.<sup>6</sup>

Upon consideration of the briefs and the entire record, we have concluded that the findings of the law judge, as affirmed by the Commandant, are supported by reliable, probative, and substantial evidence. We adopt those findings as our own. Moreover, we agree that the sanction is warranted.

Gadsden Point Cut, which is 400 feet wide and 3.02 nautical miles long, follows a southwesterly course of 249°T for outbound vessel traffic. Instead of keeping to the north side which would have been to the starboard side of his flotilla, appellant crossed

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vessel shall give, as a signal of her intention, one short and distinct blast of her whistle, which the other vessel shall answer promptly by a similar blast of her whistle, and thereupon such vessels shall pass on the port side of each other." 33 U.S.C. 203.

<sup>4</sup>This meant that appellant would not have to serve the suspension unless another charge were proved against him for acts committed during the period of probation (I.D. 23).

<sup>5</sup>Since other findings attributing prior negligence to appellant, viz. releasing an assisting tug and relying on a secondary steering system which operated sluggishly, after a failure of the primary system at the outset, instead of returning to port for repairs; were reversed by the Commandant.

<sup>6</sup>Appellant has filed an additional brief in reply to the Commandant's. It has been considered, although not provided for in the Board's rules of procedure. 49 CFR 825.20.

the centerline in making a right turn from the previous channel<sup>7</sup> and entered Gadsden Point Cut on the south side. He had already agreed on a port to port passage of the LOUISIANA BRIMSTONE and that vessel was now proceeding inbound on the south side. The BRIMSTONE's pilot requested "more room", to which appellant replied that he was heading for the north side (Tr. 45, 62).<sup>8</sup> He maneuvered north of midchannel initially but then turned back again to the south side, directly in the path of the LOUISIANA BRIMSTONE. This forced the BRIMSTONE's master to take evasive action by ordering a hard right turn at full power. The consequences, described as "a scraping and a glancing impact" (Tr.72), were thus minimized, although the BRIMSTONE was touching bottom outside of the channel at the point of collision.<sup>9</sup>

After assessing damage, both vessels were able to continue their voyages. The entire sequence of events occurred between 0120 and 0126 hours, night visibility was clear, wind was slight, and the current was slack or nearly so (Tr. 57, 66).

The narrow channel rule (Article 25) is "a particular application of the general principle laid down in Article 18, that meeting vessels shall pass port to part; and the same general considerations of prudent navigation apply under it".<sup>10</sup> Navigation on the starboard side of a narrow channel is presumed to be safe and practicable.<sup>11</sup> The purpose of these rules is to prevent collisions and the proof that appellant's flotilla was in violation of both at the time of collision is uncontested. Under these circumstances, it was incumbent on appellant to show that negligent navigation of the flotilla did not cause the collision or contribute to it.<sup>12</sup> This he failed to do.

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<sup>7</sup>The difference in heading angle between the two channels was only 9 degrees (Tr. 48).

<sup>8</sup>It also appears that one-blast whistle signals were exchanged at this time (Tr. 53, 79).

<sup>9</sup>Indicated by the fact that it was "heeled over three degrees... to port" (Tr. 80).

<sup>10</sup>Griffin on Collision, §36.

<sup>11</sup>Red Star Towing & Transportation Co., v. Tug Catherine, 305 F. Supp. 639, 643 (S.D.N.Y. 1969), aff'd per curiam 431 F. 2d 641 (2nd Cir. 1970).

<sup>12</sup>The offending vessel is liable in a collision case unless it can establish that its statutory fault was not a contributory cause

Appellant admitted entering Gadsden Point Cut on the wrong (south) side. Thereafter, in turning left to align the flotilla on an outbound course on the north side, he was unable to check its swing. He first applied right rudder while increasing the port engine full ahead, then hard right rudder with both engines full ahead, and finally reversed the starboard engine full astern at which point the flotilla "gradually stopped swinging [and] moved a little... to the right" (Tr. II 80-83). By this time the flotilla was back on the south side of the channel, both vessels had sounded the danger, and their collision was inevitable. Appellant testified that his rudder control was hard right for 3 minutes before the barge stopped swinging (Tr. II 104). If true,<sup>13</sup> it only indicates that he waited too long before taking the appropriate action. We agree with the law judge that appellant should have reversed his starboard engine in the first place (I.D. 19).

Although appellant claimed something had gone wrong with the rudder (Tr. II 98), no evidence of a defective condition was produced. In explaining why no abnormal response to his helm orders occurred subsequently during the voyage, appellant testified that he tightened the rigging of the vessel in the notch of the barge after the collision, and had no further difficulty (Tr. II 85, 101). If the towing vessel was not secure in the notch, this could affect the maneuverability of the barge loaded as it was with 23,427 tons of phosphate rock. An experienced river and canal pilot, called by appellant, also testified that because of the towing vessel's "squat" while pushing the stern of the barge in a narrow channel, the bow of the tow may tend to sheer. This was simply an hypothesis.<sup>14</sup> Regardless of the reason, however, the record shows that appellant had sufficient rudder and engine control to remain on the starboard side of the channel but refused or neglected to apply reverse thrust to counteract the sheer forces except as a last resort. By delaying the reversal of his starboard engine which ultimately corrected the flotilla's sheer to the opposite side, but not in time to prevent a collision with the LOUISIANA BRIMSTONE, appellant was clearly acting in violation of Articles 25 and 18 of the Inland Rules. We therefore find that his lack of due care and navigating skill led to and caused the ensuing

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and could not have been. In creating this presumption of fault, the Supreme Court found that "Such a rule is necessary to enforce obedience" to statutes intended to prevent collision. The Pennsylvania, 86 U.S. 125, 136, 22 L.Ed. 148 (1873).

<sup>13</sup>The law judge did not accept this 3-minute estimate "as gospel" (I.D. 18).

<sup>14</sup>Described as a "pet theory" by the witness (Tr. II 122-123).

collision.

ACCORDINGLY, IT IS ORDERED THAT:

1. The instant appeal be and it hereby is denied; and
2. The order of the Commandant modifying the order imposed by the law judge, which suspends appellant's license for 2 months on 4 months' probation, be and it hereby is affirmed.

KING, Chairman, DRIVER, Vice Chairman, McADAMS and GOLDMAN, Members of the Board, concurred in the above opinion and order. BURSLEY, Member, did not participate.